IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 514 of 1999

in

SPECIAL CIVIL APPLICATIONNo 1485 of 1999

with
CIVIL APPLICATION NO. 3533 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARPREETSINGH GILHOTRA
Versus
STATE OF GUJARAT

Appearance:
MR BP MUNSHI for Appellants
Ms Manisha Lavkumar,AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.THAKKAR and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: /02/2000

CAV JUDGEMENT

Per Thakker, J.:

This appeal is filed against the judgment and order passed by the learned Single Judge in SCA No. 1485 of 1999 on March 1, 1999.

Appellants were the original petitioners. They filed the above petition for an appropriate writ, direction or order quashing and setting aside a memorandum dated May 20, 1996 , Annexure `E' to the petition as also a communication dated March 31, 1998, Annexure `F' to the petition by which the petitoners were required to execute a bond that they will serve in rural area for a period of three years after completion of Post Graduate Study.

Appellants-ptitioners are the post-graduate students in various disciplines of medical science at Sir M.P. Shah Medical College, Jamnagar. They have come ofrom different parts of the country. They were eligible for post graduate courses in different disciplines of medical science on their passing of All India Entrance Examination for admission to post graduate courses conducted by All India Institute of Medical Science on allocated seats in the State of Gujarat. On March 31, 1996, the petitioners joined their respective courses in the above college. On October 7, 1993, the State of Gujarat, through Health and Family Welfare Department, Gandhinagar issued a resolution . Clause 15 thereof categorically stated that it would not be necessary to obtain any bond from the students who were appointed in residency or who were admitted in post graduate courses after passing of All India Entrance Examination. On May 20, 1996, however, a communication was addressed by the Dean, M.P.Shah Medical College, Jamnagar which directed the petitioners to execute such bond. It was also stated that breach of any conditions of the said bond would entail penalty of Rs. 75,000/-. It further provided that persons who would stand as surety must have settled in Gujarat State and must possess property in Gujarat. In case of failure of furnishing solvency certificate as required, bank guarantee of Rs. 75,000/- would have to be furnished. It was also made applicable to students who were admitted on All India Entrance Examination quota. It was the case of the petitioners that being aggrieved by the said communication , certain post graduate students filed a petition, being SCA No. 4318

of 1996 and this Court (Coram: N.N. Mathur, J) on June 25, 1996, passed the following order :

"Mr. K.H.Baxi, learned counsel for the petitioners, contends that the petitioner falls in the category provided under condition No.15 of the resolution-Annexure 7, which provides for the exemption to the candidates by way of All India Entrance Examination.

Rule returnable on 15th July 1996. Meanwhile, by way of an ad-interim relief, the respondents will not insist for the execution of bond and will permit the petitioners to join their respective courses".

Thus, this Court entertained the petition by issuing Rule and by granting interim relief restraining the respondents from insisting of bond as required vide communication, dated May 20, 1996. According to the petitioners, in spite of the above order, a letter was written by the Dean on March 31, 1998 directing the petitioners to execute bonds. Since the petitioners apprehended that for non-compliance of demand to execute bond may result in not permitting them to appear in the examination, they filed the above petition. In para 15 of the prayer clause, following reliefs were prayed by the petitioners:

"15. The petitioners, therefore, most humbly and respectfully pray as follows :

A) That this Honourable court would be pleased to issue a writ of mandamus and a writ in the nature of mandamus and/or an appropriate writ, order or direction, quashing and setting aside the actions, orders, instructions and directions as contained in the memorandum. dated 20.5.1996 as well as dated 31.3.1998 as produced and marked as Annexures E and F respectively to this petition in the interest of justice;

B) That this Honourable court would be pleased to issue a writ of mandamus and/or writ in the nature of mandamus and/or an appropriate writ, order or direction, directing the

respondents herein to permit the petitioners to continue and prosecute their post graduate studies without furnishing bonds, sureties or solvent certificate of any nature whatsoever and permit them to appear in the examination to be conducted from time to time and complete their studies in the interest of justice.

C) Pending admission, hearing and final disposal of this writ petition, the Honourable court would be pleased to issue an interim relief directing the respondents to permit the petitioners to prosecute and continue their studies of post graduate courses in which they are duly admitted and allow the petitioners to complete their post graduate courses and appear them in the examinations from time to time and more particularly in the examination to be conducted in April, 1999 and to obtain results of the examinations and issue no objection certificate to the petitioners till passing the examinations and secure their respective degrees without any compulsion or insistence of execution of any kind of bonds or furnishing of solvency certificates or producing sureties or bank guarantee etc. by way of interim relief in the interest of justice.

D) Any other and further relief/s taking into consideration the facts and circumstances of the case, may kindly be passed in the interest of justice."

When the petition was placed for hearing before the learned Single Judge, he was informed that an identical petition filed by other students was pending , rule was issued and interim relief was also granted. Learned Single Judge himself has also quoted the number of petition, order of admission as also interim relief. Learned Single Judge was also satisfied that the question raised in the petition was similar to the one raised in the present petition. This is clear from the following part of the order of the learned Single Judge:

"From the order of this court passed in Special civil application No. 4318 of 1996,dated 25th June 1996, I find that the said matter pertains to the dispute of identical nature as has been raised in this special civil application. There the contention of the learned counsel for

petitioners seems to be that in view of the condition No.15 of the Government resolution dated 7.10.1993, the post graduate students who got admission in the State of Gujarat on All India Entrance Examination in different medical colleges need not execute any bond."

Learned Single Judge then proceeded to observe that medical professionals, after completion of their medical courses and on their appointment on the post of medical officers seldom like to go to the rural areas. It was in the light of the said hard reality that the State Government had taken a decision to obtain bond from students.

The learned Single Judge observed:

"It is a matter of which a notice may be taken that the medical professionals, after completion of their medical courses and on their appointment on the post of medical officers seldom like to go to the rural areas. For this tendency of medical officers, it is very difficult for the State Government to have medical officers in the rural areas. The people residing in rural areas may not get adequate medical facilities for want of medical officers. To fulfil this object and purpose and to ensure that regularly the medical officers are available in the rural, areas, this approach of the Government to take from post graduate students the bond so that they may serve rural areas is not illegal or arbitrary or contrary to any provisions of the Constitution of India. In fact, such a condition by the Government is reasonable and this court do not find any illegality or unconstitutionality therein."

The learned Judge then stated :

"The Government, no doubt, on 7th October 1993, has passed a resolution wherein under clause 15, it is provided that the students who have been admitted on the basis of their merits of All India Entrance Examination and allocated to the State of Gujarat need not to execute such bond. This also seems to be reasonable exception carved out because this class of students are not belonging to the State and after completion of

their post graduate courses, it is but natural that they may not settle in the State of Gujarat. So in case, this exception is carved out in the resolution of the Government dated 7th October 1993, then the same is justified and reasonable approach of the State Government. However, from the letters of the respondent No.2 dated 20th May 1996 and 31st March 1998, prima facie it appears that the earlier resolution dated 7th October 1993, would have been amended or modified or cancelled. The learned counsel for the petitioners is unable to throw any light on this aspect of the matter. Be that as it may, even if it is taken that now the Government of Gujarat has made it compulsory even for the post graduate students who have been allocated to the State after passing of the All India Entrance Examination, insistence of furnishing the bond from such class of post graduate students of medical science seems to be not justified, reasonable and in the larger interest of those students. This court cannot be oblivious of the fact that these are the students from different States of the country and as stated earlier, normally, it is expected of them that after completion of their post graduate studies, they will like to go back to their parent State."

The Court , however, was conscious of the fact that students who might have been admitted to a particular college in a particular State may not be able to serve rural areas of other State. In the opinion of the learned Single Judge, however, such matter needs to be considered by the State Government from different angle. According to the learned Single Judge, a bond was demanded from the student who is to settle in Gujarat. He is, therefore, expected to abide by the terms and conditions of such bond. In the words of learned Single judge-

"Where a student decides to settle in State of Gujarat, it is reasonable on the part of the State of Gujarat to ask from him to execute bond but in other cases, it is equally essential for those respective States, to get the bond executed from them also through the State of Gujarat."

Learned Single Judge then observed that taking into

consideration the totality of facts of the case, in his opinion, it was not a fit case to call upon respondents to answer. He also observed that another SCA was pending and it would be too much to think that State would ask the students at this stage to furnish bond. He, therefore, dismissed the petition by observing thus :

> "Taking into consideration the totality of the facts of this case, I do not find it to be a fit case where the respondents are to be called upon in this matter. The matter in issue is already pending for consideration before this court in the Special Civil Application No.4318 of 1996 and whatever decision given therein shall be binding also on these students. Secondly, these students have been admitted in the year 1996 and by now, they are at the fag end of completion of their courses. Now, at this stage, otherwise also, to ask them to furnish this bond seems to be unreasonable. It appears that because of the interim relief granted by this court in Special civil application No. 4318 of 1996, the respondents would not have proceeded further with their earlier memorandum dated 20th May 1996., In case that Special civil application is finally decided, the respondents shall be at liberty to proceed in accordance with the decision given therein. It is made clear that no hurdles or difficulties should be created and in fact, the petitioners should be permitted to prosecute and complete their post graduate studies and they may be permitted to appear in the examination to be conducted from time to time. However, before result of their examination is declared, the matter has to be decided after giving notice and opportunity of hearing to the petitioners and in the light of judgment, if already given in the earlier petition as well as the observations made in this order".

The petition was accordingly dismissed subject to the observations and direction given in the order. It is this order which is challenged in the present appeal.

When the appeal was placed for hearing, it was admitted by the Division Bench (Coram: K.G.Balakrishnan, C.J. and S.D.Dave, J.) on June 17, 1999 and was ordered to be fixed for final hearing on July 19, 1999.

We have heard Mr. B.P.Munshi for the appellants and Ms Manisha Lavkumar, AGP for the State.

From the order passed by the learned Single Judge, it is clear that it was an ex-parte order. No notice was issued and the petition was disposed of by making certain observations and issuing certain directions. Mr. Munshi for the appellants, however, stated that since the petition was dismissed, without issuing notice to the respondents, the authorities insisted for furnishing of bond from the appellants and accordingly, the appellants have already furnished bonds as directed. Grievance of Mr. Munshi was that though the learned Single Judge has specifically observed that since an identical petition was pending (SCA No. 4318 of 1996) and interim relief was granted and that students were already admitted and sufficient long time elapsed, it would be unreasonable to think that the authorities would now ask the appellants to execute bond, the authorities insisted for such bond and the appellants had to furnish such bond. Acording to Mr. Munshi, the authorities totally ignored the above observations presumably on the ground that no notice was issued to the authorities and the order was passed without hearing them .

Several contentions were advanced by Mr. Munshi on behalf of the appellants. He submitted that when an identical point was raised in SCA No. 4318 of 1996 and the said petition was admitted and interim relief was granted, it was not open to the learned Single Judge to dismiss similar petition and that too without issuing notice to the other side. The order passed by the learned Single Judge, therefore, deserves to be set aside. He also contended that action of the authorities is contrary to law and without any power or authority. The appellants were admitted on All India Entrance Examination quota. Certain seats were allocated to All India Medical Science . They could not be asked to execute bond and a resolution was also passed by the State of Gujarat on October 7, 1993 to that effect. Clause 15 of the said resolution is express and explicit. The action of respondent No.2 directing the appellants to execute a bond ,therefore, is contrary to the resolution and is liable to be set aside. The appellants were admitted in March 1996 and joined M.P.Shah Medical College, Jamnagar on March 31, 1996. Even if it is assumed for the sake of argument, according to the learned counsel, that State Government has such power to issue a circular/ resolution, giving go-bye to the earlier resolution, it can be made applicable only from March 1996 i.e. to those students who were admitted

after May 20,1996 and not prior to that date. In other words, any memorandum/ resolution/ circular issued by the State Government or Dean would not have retrospective effect and cannot apply to students who were admitted earlier and were prosecuting their study. Finally, the impugned action and communication is arbitrary, unreasonable and violative of Articles 14 and 19 of the Constitution of India inasmuch as similarly situated students in other States and other medical colleges are not required to furnish bonds and the appellants who are otherwise situated have been treated differently. Such action would,therefore, be liable to be struck down on that ground also.

Ms Manisha Lavkumar, on the other hand, supported the order passed by the learned Single Judge. She submitted that it was true that earlier petition was admitted, Rule was issued and interim relief was granted. It was also true that the learned Single Judge had stated that the point was identical and interim relief was granted and the petition was pending. In fact, however, the day on which the learned Single Judge dismissed the present petition (SCA No. 1485 of 1999 on March 1, 1999), previous petition (SCA No. 4318 of 1996) was not pending inasmuch as on September 8, 1997, that petition was placed for hearing and since the learned counsel for the petitioner was not present,it was dismissed for default. On merits, she submitted that the learned Single Judge cannot be said to have committed error of law and/or jurisdiction which requires interference by this Court. She submitted that the State is spending substantial amount on medical education. It is,therefore, open to the State authorities to ask students prosecuting their study to furnish bond and it is not open to the students to refuse to furnish such bond. The action cannot be said to be illegal or unreasonable. She also submitted that such bonds are taken from all students and the appellants cannot refuse to furnish such bond on specious plea that they belong to other State and have been admitted on All India Entrance Examination quota. Neither Article 14 nor 19 of the Constitution can be pressed in service. According to her, in 1993, the State Government decided not to furnish bond by students who got admitted through All India Entrance Examination. But the State has power to change the policy which was changed in 1996 whioch is open to the State and the appellants cannot be make any grievance. Unless the policy is aritrary or violative of any provision of law,no grievance can be made against it. Finally, it was submitted that a similar question arose before the learned Single Judge in SCA No. 4297 of 1999 and

companion matters and after considering all aspects, learned Single Judge disposed of all petitions partly upholding the action of the State Government. No purpose now will be served even if this Court is of the opinion that learned Single Judge ought not to have dismissed the petition without issuing notice to the other side and calling upon them to appear in the matter.

We have considered the rival contentions of the parties. In our opinion, LPA deserves to be allowed and the petition requires to be decided afresh. It is an admitted fact that the grievance made by the appellants petitioners before the learned Single Judge was regarding issuance of memorandum and insisting for furnishing of bond. An identical question was raised by similarly situated students in SCA No. 4318 of 1996. Before the learned Single Judge, the said fact was highlighted and it was brought to the notice of the Court that rule was issued and interim relief was granted. Learned Single Judge proceeded on the basis that the matter was admitted, interim relief was granted and it was pending for final hearing. Learned Single Judge did not proceed on the basis that the matter was disposed of by default of appearance of the learned counsel and that it was `dead'. In fact, the learned Single Judge, in light of the pendency of petition, identical question involved therein and grant of interim relief, observed that no purpose would be served by admitting subsequent petition. He further observed that in view of pendency of one petition and grant of interim relief , the authorities would not insist on furnishing of bond by the petitioners. It, however, appears that the authorities not only insisted on furnishing of bond but the appellants were constrained to furnish such bond in view of the fact that otherwise, it would have been treated as default on the part of the appellants. As on today, therefore, bonds have already been furnished by the appellants. In our opinion, in these circumstances, contention of learned counsel for the appellants is well founded that the learned Single Judge ought not to have dismissed the petition summarily without issuing notice to the other side and issuing necessary directions. True it is, as submitted by Ms Lavkumar, that several petitions came to be disposed of by a judgment. But the said judgment is dated July 22, 1998; whereas the grievance of the appellants is against an order dated March 1, 1999. Thus, at that time, those petitions which were of 1999 were not disposed of. Again, it was submitted by Mr. Munshi that there are few more points in his petition. We express no opinion on that point. In our view, LPA deserves to be allowed by remanding the

matter back to the learned Single Judge to decide the same in accordance with law . It is open to the learned counsel for the appellants to raise all contentions. It is equally open to the authorities to support the action of the authorities on all available grounds. It is also open to them to press in service a decision of the learned Single Judge in group of petitions decided on July 22, 1999.

For the foregoing reasons, LPA deserves to be allowed and is accordingly allowed. The order passed by the learned Single on March 31, 1999 is quashed and set aside and the matter is remanded to the learned Single Judge to decide afresh in accordance with law. We may state that we have not entered into merits of the matter and as and when the matter will be heard by the learned Single Judge, the same will be decided on its own merits without being influenced in any manner by the observations made in the judgment impugned in the present appeal or made by us hereinabove. It is also clarified that since bonds are already executed by the appellants, there is no question of grant of interim relief. Execution of those bonds ,however, is subject to final outcome of the proceedings. LPA is accordingly allowed. Rule issued on civil application stands discharged. In the facts and circumstances of the case,there will be no order as to costs.

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parekh